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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

ICON HEALTH & FITNESS, INC., a Delaware corporation, Plaintiff, vs. **NAUTILUS, INC.**, a Washington corporation, Defendant.	Case No. 1:17-cv-00164-DAK **COMPLAINT** **JURY TRIAL DEMANDED** Honorable Judge Dale A. Kimball United States District Judge

Plaintiff ICON Health & Fitness, Inc. ("ICON" or "Plaintiff") hereby claims against defendant Nautilus, Inc. ("Nautilus" or "Defendant") for the causes of action alleged as follows:

THE PARTIES

1. ICON is a corporation duly organized and existing under the laws of Delaware with its principal place of business located at 1500 South 1000 West, Logan, Utah, 84321.

2. On information and belief, Nautilus is a Washington corporation with its headquarters and principle place of business located at 17750 SE 6th Way, Vancouver, Washington 98683.

JURISDICTION AND VENUE

3. This is a civil action arising under the laws of the United States, including, but not limited to Section 43(a)(1)(A) of the Lanham Act and 15 U.S.C. § 1114.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

5. This Court has personal jurisdiction over Nautilus because Nautilus has purposely availed itself of the privileges and benefits of the laws of the State of Utah, and has committed acts of false advertising and trademark infringement within this judicial district.

6. ICON alleges, on information and belief, that Nautilus has made false statements regarding its products and has infringed ICON's registered trademarks within the State of Utah and this District, to ICON's injury, that relate to the claims asserted by ICON, and out of which ICON's claims, in part, arise.

7. On information and belief, Nautilus advertises, markets, sells, and offers for sale its infringing products through its websites and at retail sporting goods stores, such as DICK's

Sporting Goods, the advertising, marketing, selling, and offerings of which are available to the purchasing public in the State of Utah.

8. On information and belief, Nautilus advertises its false statements through its websites and catalogs, the advertising, marketing, selling, and offerings of which are available to the purchasing public in the State of Utah.

9. On information and belief, Nautilus's products are available to persons within the State of Utah.

10. This Court's exercise of personal jurisdiction over Nautilus is consistent with the Constitutions of the United States and the State of Utah.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 because Nautilus has committed acts of infringement and false advertising and regularly sells the products that are the subject of this action within this district.

FACTUAL BACKGROUND

Trademark Infringement

12. ICON is an award-winning innovator in the field of exercise equipment and it markets and sells a variety of exercise related products.

13. ICON came to its position of technological leadership through innovation and substantial investment in research, development and acquisition of cutting-edge technologies. As a result of its endeavors, many of the technological innovations created and owned by ICON are protected by a valuable and diverse intellectual property portfolio that includes patents, trademarks, trade dress, and copyrights.

14. For decades, ICON has marketed and sold various branded goods and services worldwide, including exercise and sports equipment, under various trademarks.

15. ICON markets and sells its goods and services in the United States, both online and through stores nationwide, including within the State of Utah.

16. By virtue of its continuous and exclusive use of its trademarks, ICON has established common law rights and obtained numerous trademark registrations for its goods and services in the United States.

17. ICON is the owner of all right, title and interest to, *inter alia*, the following trademarks, including common law rights associated therewith (collectively, the "Marks"):

A. U.S. Registration No. 3,262,981, issued on July 10, 2007 and first used in commerce at least as early as December 22, 1999, for the mark ONE TOUCH for use in connection with exercise machines in International Class 28, including all common law rights associated therewith. A true and correct copy of this registration is attached hereto as Exhibit 1.

B. U.S. Registration No. 3,262,982, issued on July 10, 2007 and first used in commerce at least as early as January 1999, for the mark QUICK SPEED for use in connection with exercise machines in International Class 28, including all common law rights associated therewith. A true and correct copy of this registration is attached hereto as Exhibit 2. (The ONE TOUCH and QUICK SPEED marks are collectively referred to as the "Marks").

18. ICON has extensively and continuously used, advertised, promoted, marketed and otherwise publicized each of the Marks, including prior to and since the date of applicable registration, and they are in full force and effect. ICON has given notice to the public of the registration of the above registered Marks pursuant to 15 U.S.C. § 1111.

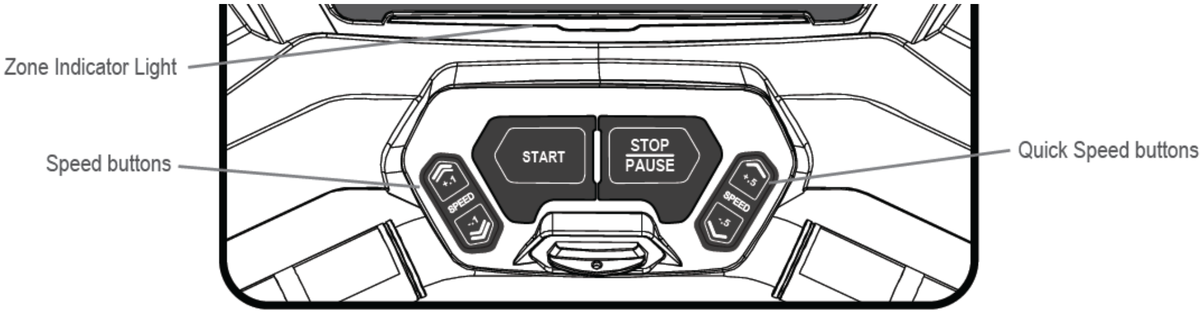
19. The QUICK SPEED mark has been declared incontestable under 15 U.S.C. § 1065.

20. ICON has invested substantial money and effort to develop goodwill in the Marks, to cause consumers throughout the United States and abroad to recognize them as distinctly designating ICON's goods and services as originating with ICON.

21. The value of the goodwill developed in the Marks is substantial.

22. Nautilus is the maker of the exercise machine named Bowflex TreadClimber® TC200.

23. The instruction manual for the TreadClimber includes at least the following improper use of ICON's QUICK SPEED mark:



24. Nautilus is the maker of the exercise machines sold under the Schwinn brand, including its 430 Elliptical, Elliptical Trainer Model 438, and Bio-Fit Comfort System.

25. At least the instruction manuals for these exercise machines include improper use of ICON's ONE TOUCH mark in a substantially similar way to the following example:

QUICK START	When the screen displays "**ENTER PROGRAM**," pressing this button will start the Manual program. This is a "one-touch" way of starting the Manual program.

26. Nautilus's use of the Marks was well after ICON's adoption and use of the Marks.

27. Nautilus has been marketing and selling exercise machines with the Marks in violation of ICON's rights.

False Advertising

28. Nautilus is the maker of the Bowflex Max Trainer machine (the "Max Trainer"), and the Bowflex High Velocity Trainer (the "Bowflex HVT") which compete directly with ICON's personal exercise machines.

29. In Nautilus's advertising for the Max Trainer, example advertising found at http://www.bowflex.com/max-trainer/why, Nautilus has made many statements regarding the Max Trainer and its effectiveness in helping consumers burn calories, engage muscle, and lose weight.

30. Nautilus's statements include the assertion, and variations thereof, that users of the Max Trainer experience "2.5X MORE CALORIES BURNED EVERY MINUTE" in comparing the Max Trainer to treadmills, steppers, and ellipticals. Historically, these statements have included the assertion that this increased calorie burn occurs "with users working out at the same pace and intensity."

31. Nautilus's statements also include the assertion, and variations thereof, that "trial users have burned up to 600 calories or more in 30 minutes."

32. Nautilus's statements further include or have included the assertion, and variations thereof, that "[y]ou'll get all the cardio benefits of a much longer workout in just 14 minutes" and "you'd have to work out around 35 minutes to burn the same amount of calories you could burn on MAX in just 14 minutes!"

33. Nautilus has also asserted that with the Max Trainer, users experience "80% MORE UPPER BODY ACTIVATION" while being "2x easier on joints" and "[t]esting in the lab showed it [the Max Trainer] engaged more core and lower body muscles than ellipticals and up to 80% more upper body."

34. Nautilus has additionally claimed that its "first trial group lost a combined 359 lbs in 10 weeks!"

35. These statements are purportedly wholly or partially based on an "independent study." On information and belief, that study, which was funded by Nautilus, does not substantiate these claims, and such claims are false and/or misleading.

36. Nautilus has also made claims that users of the Max Trainer can expect to achieve incredible results. For instance, the testimonials on Nautilus's website include the following "success stories:"

A. "I lost 10 pounds and 4 percent body fat in 10 weeks . . . . 14 minutes is all it takes." - Jay

B. "I lost 12.5 pounds in just 10 weeks." - Jill

C. "I lost 42 pounds in 10 weeks." - Bill

D. “I dropped 6 percent body fat in 10 weeks. You get on the Max Trainer for 14 minutes and you get this great, full body workout.” - Amy

E. “I lost 22 pounds in 10 weeks” - Alex

F. “I lost 27 pounds in 10 weeks and I went from a size 10 to a size 4” - Bobbi

G. “I lost over 8% body fat in 10 weeks thanks to the Max Trainer.” – Erin

H. “I lost 21 pounds in 10 weeks! I feel fantastic. I have more energy. I’m more motivated. My overall health and fitness is completely transformed. Max is a great full body workout. 14 minutes is all it takes.” – Ryan

I. “I lost more than half my body fat. 300 calories in 14 minutes? Well that’s an hour on another machine!” – Tony

37. On information and belief, these claims do not accurately represent the results that can be expected by the average user of the Max Trainer.

38. On information and belief, these claims include so little information about the use of the Max Trainer by the selected participants, their diet, other fitness activities, and/or physique such that they are false and/or misleading.

39. On information and belief, these claims are not made by endorsers who were and still remain bona fide users of the Max Trainer.

40. In Nautilus's advertising for the Bowflex HVT, example advertising found at http://www.bowflex.com/hvt/why, Nautilus has made many statements regarding the Bowflex HVT and its effectiveness in helping consumers burn calories, engage muscle, and lose weight.

41. These statements are purportedly wholly or partially based on a "2016 University Study." On information and belief, that study, which was funded by Nautilus, does not substantiate these claims, and such claims are false and/or misleading.

42. On information and belief, the claims made by Nautilus do not accurately represent the results that can be expected by the average user of the Bowflex HVT.

43. On information and belief, Nautilus's claims include so little information about the use of the Bowflex HVT by the selected participants, their diet, other fitness activities, and/or physique such that they are false and/or misleading.

44. On information and belief, Nautilus's claims are not made by endorsers who were and still remain bona fide users of the Bowflex HVT.

45. As a direct result of Nautilus's conduct, ICON has suffered damages.

FIRST CLAIM FOR RELIEF

(Trademark Infringement – 15 U.S.C. § 1114)

46. By this reference ICON realleges and incorporates the foregoing paragraphs as though fully set forth herein.

47. "One Touch" is a direct imitation of the ONE TOUCH mark, subject to federal registration, as an individual trademark, and, as used in commerce by Nautilus, is likely to cause confusion, mistake or to deceive the public as to the identity and origin of Nautilus's goods and services.

48. “Quick Speed” is a direct imitation of the QUICK SPEED mark, subject to federal registration, as an individual trademark, and, as used in commerce by Nautilus, is likely to cause confusion, mistake or to deceive the public as to the identity and origin of Nautilus’s goods and services.

49. Upon information and belief, Nautilus has adopted and is using the Marks with the willful intent to trade on ICON’s reputation and goodwill established in the Marks.

50. On information and belief, Nautilus has had actual knowledge of ICON’s exclusive rights in the Marks, and willfully and deliberately infringed, and continues to infringe, on such rights.

51. ICON has no adequate remedy at law because the Marks are unique and represent to the public ICON’s reputation and goodwill such that damages alone cannot fully compensate ICON for Nautilus’s misconduct.

52. Unless enjoined by this Court, Nautilus will continue its infringing actions resulting in damage to ICON and its extensive business and goodwill symbolized by the Marks.

53. Pursuant to 15 U.S.C. § 1116, ICON is entitled to an order of this Court, effective during the pendency of this action and thereafter to be made permanent, enjoining Nautilus, its officers, agents and employees from using the Marks or other designations confusingly similar to the Marks.

54. Nautilus’s actions have been and continue to be malicious, fraudulent, willful and deliberate, thereby making this an exceptional case pursuant to 15 U.S.C. § 1117(a).

55. By reason of the foregoing, in addition to injunctive relief, ICON is entitled to an award of compensatory damages and treble damages, Nautilus's profits, costs and attorneys' fees.

SECOND CLAIM FOR RELIEF

(Trademark Infringement – Common Law)

56. By this reference ICON realleges and incorporates the foregoing paragraphs as though fully set forth herein.

57. ICON has been using the Marks worldwide, including within the State of Utah, to identify and signify itself as the source of its goods and services.

58. Through extensive and continuous use of the Marks, ICON has developed substantial goodwill in the Marks. The Marks have become well known, including within the State of Utah, and beyond and have earned substantial goodwill among Utahans and individuals located around the world.

59. Nautilus's use of the Marks constitutes a use in commerce that is likely to cause confusion and mistake and to deceive consumers as to the source or origin of its goods such that consumers may believe that Nautilus's goods are sponsored by, endorsed by, approved by, licensed by, authorized by, affiliated with or connected with ICON.

60. By virtue of the foregoing, Nautilus has infringed and continues to infringe upon the Marks.

61. Upon information and belief, Nautilus has adopted and is using the Marks with the willful intent to trade on ICON's reputation and goodwill established in the Marks.

62. Nautilus's acts are causing and continue to cause ICON irreparable harm in the nature of loss of control over its reputation and loss of substantial consumer goodwill. The irreparable harm to ICON will continue, without any adequate remedy at law, unless and until Nautilus's unlawful conduct is enjoined by this Court.

63. By reason of the foregoing, in addition to injunctive relief, ICON is entitled to an award of compensatory damages and treble damages, Nautilus's profits, costs and ICON's attorneys' fees.

THIRD CLAIM FOR RELIEF

(False Advertising in Violation of Section 43(a)(1)(A) of the Lanham Act)

64. By this reference ICON realleges and incorporates the foregoing paragraphs as though fully set forth herein.

65. At least Nautilus's statements provided above regarding the Max Trainer and Bowflex HVT are literally false and/or misleading descriptions or representations of fact which misrepresent the nature, characteristics and qualities of the Max Trainer and Bowflex HVT and as such constitute false advertising under 15 U.S.C. § 1125(a).

66. On information and belief, Nautilus's false and/or misleading statements have been made willfully and Nautilus will continue their false advertising unless enjoined by this Court.

67. ICON has been and will continue to be damaged by Nautilus's false advertising.

PRAYER FOR RELIEF

WHEREFORE, ICON prays for judgment against Nautilus as follows:

A. Preliminarily and permanently enjoining and restraining Nautilus, its officers, directors, shareholders, agents, employees, and all persons or entities in active concert or participation with them, pursuant to 15 U.S.C. § 1116, from the following (the "Trademark Injunction"):

i. Using in any manner the Marks or any other designation that is confusingly similar to or a colorable imitation of the Marks;

ii. Using in any manner any trademark, service mark, words, abbreviations, designs, arrangements, or other combinations thereof that would imitate, resemble, or suggest the Marks;

iii. Any false or misleading description of fact, or false or misleading representation of fact, or other fact of unfair competition, which is likely to cause confusion, or to cause mistake, or to deceive as to the existence or nature of an affiliation, connection or association between Nautilus and ICON as to the origin, sponsorship, endorsement, authorization or approval by ICON of Nautilus's goods, services or commercial activities; and

iv. Otherwise infringing the Marks.

B. Ordering Nautilus, pursuant to Section 34 of the Lanham Act, 15 U.S.C. § 1116, to file with the Court and serve on ICON within thirty (30) days after entry of the Trademark Injunction, a report in writing under oath setting forth in detail the manner and form in which Nautilus has complied with the Trademark Injunction;

C. Ordering Nautilus to render an accounting to ascertain the total amount of any and all profits derived by Nautilus as a result of its unlawful and unauthorized use, exploitation and infringement of the Marks;

D. Ordering Nautilus, pursuant to Section 36 of the Lanham Act, 15 U.S.C. § 1118, to deliver up for destruction all containers, labels, signs, prints, packages, wrappers, receptacles and advertisements, in the possession, custody or under the control of Nautilus, bearing the Marks or any other designation that is confusingly similar to or a colorable imitation of the Marks;

E. Awarding to ICON compensatory damages in an amount to be determined, including, without limitation, Nautilus's profits attributable to its infringement and costs, together with any and all other remedies to which ICON may be entitled under the Lanham Act or the common law;

F. Declaring this to be an exceptional case and awarding to ICON treble damages and its reasonable attorneys' fees incurred and to be incurred by ICON in connection with this action;

G. For a preliminary and permanent injunction, under 15 U.S.C. § 1116, restraining and enjoining Nautilus, its agents, servants, employees, officers, and those persons in act of concert or participation with Nautilus, from any false advertising with respect to its Max Trainer and Bowflex HVT;

H. For an award of costs, profits and damages, which damages and profits are then trebled, under 15 U.S.C. § 1117, for Nautilus's false advertising with respect to its Max Trainer and Bowflex HVT, or, in the alternative, statutory damages; and

I. An award of any other and further relief as the Court deems just and equitable.

DEMAND FOR JURY

ICON demands TRIAL BY JURY of all causes and issues so triable.

DATED: October 18, 2017

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